

REMARKS

In the Office Action, claims 1-7 were allowed, and claims 8-20 were rejected. Claims 1-20 will be pending in the present patent application. Reconsideration and allowance of all pending claims are requested.

Rejections Under 35 U.S.C. § 102

The Office Action summarizes claims 8, 11-13 and 19 were rejected under 35 U.S.C. § 102(b) as being anticipated by Scott (U.S. Patent 5,959,980; hereinafter “Scott ‘980”). The Office Action further summarizes claims 14-16 were rejected under 35 U.S.C. § 102(e) as being anticipated by Scott (U.S. Patent 6,141,373; hereinafter “Scott ‘373”).

Claim 8 recites a system for short range communications comprising a transmitter *configured to transmit a colored noise-like preamble* and a receiver for receiving the colored noise-like preamble and including an antenna with an antenna pattern, a direction of the antenna being controllable by the receiver. The system further comprises a signal processor connected and responsive to the receiver for detecting and estimating the strength of the colored noise-like preamble.

Claim 14 recites a system for short range communications comprising a transmitter *configured to transmit a colored noise-like preamble* and a receiver for receiving the colored noise-like preamble and including at least two antennas having at least two output signals that are independently provided. The system further includes a signal processor connected to the receiver and combining the at least two antenna output signals.

Claim 19 recites a system for short range communication comprising a transmitter *configured to transmit a colored noise-like preamble* and a receiver for receiving the colored noise-like preamble and including at least one antenna with an antenna pattern, a

direction of the antenna being controllable by the receiver. The system further includes a signal processor connected and responsive to the receiver for detecting and estimating the strength of the colored noise-like preamble, and for causing reorientation of the antenna pattern of the at least one antenna based upon the preamble strength.

The Examiner pointed out that the functions of the transmitter and receiver of Scott '980 and Scott '373 include transmitting and receiving preamble signals, respectively. In the Response to Arguments section of the action, the Examiner stated that “[t]he transmission of a colored noise-like preamble does not alter the configuration of the claimed transmitter.” The Examiner’s statement is wholly incorrect and entirely misses the point of the plain meaning of the claim language.

A transmitter that is configured to transmit a colored noise-like preamble is physically different to a transmitter that is NOT configured to transmit a colored noise-like preamble (and instead is configured for transmitting multiple bursts). The Examiner provided no basis whatsoever for assuming that the transmitter as disclosed by Scott '980 or Scott '373 could transmit a colored noise-like preamble absent the teachings of the present invention, as well as complete reconfiguration (i.e., physically modifying) of the Scott device.

The Court of Appeals for the Federal Circuit has repeatedly confirmed that a device configuration alters the actual structure of the device. For example, in the case of *In Re Alappat*, 31 USPQ2d 1545, the Federal Circuit considered claims that specifically recited a rasterizer for converting vector list data representing sample magnitudes of an input waveform into anti-aliased pixel illumination intensity data to be displayed on a display means. The rasterizer comprised means for determining the vertical distance between the endpoints of each of the vectors in the data list and means for determining the elevation of a row of pixels that is spanned by the vector. The rasterizer further included means for normalizing the vertical distance and elevation and means for

outputting illumination intensity data as a predetermined function of the normalized vertical distance and elevation.

Claims at issue before the Court specifically recited elements “configured to” perform special functions, as in the present case. In considering the claims the Federal Circuit specially state “[w]e have held that such programming creates a new machine, because a general purpose computer in effect becomes a special purpose computer once it is programmed to perform particular functions pursuant to instructions from program software.” *Id.* At 1558.

The same is true of the present claims. The transmitter, as recited in claims 8, 14 and 19, is configured to transmit a colored noise-like preamble, which makes it a special transmitter as it is programmed to perform one particular function and thus makes it different from a transmitter that is NOT configured to transmit a colored noise-like preamble. Any change in the transmitter disclosed by Scott ‘980 and Scott ‘373 to transmit a colored noise-like preamble would be solely based on hindsight, which is improper.

Applicants respectfully submit that Scott ‘980 and Scott ‘373 fail to disclose a transmitter configured to transmit a colored noise-like preamble as recited in independent claims 8, 14 and 19. Although, in theory, the device disclosed by Scott ‘980 and Scott ‘373 may be capable of transmitting signals in general, nowhere do the references suggest that the transmitter is capable of transmitting a colored noise-like preamble. The references certainly do not disclose that the transmitter is configured to generate a colored noise-like preamble as recited in independent claims 8, 14 and 19. Thus, the transmitter disclosed by Scott ‘980 and Scott ‘373 cannot be compared to the tranmitter disclosed in the present application.

Accordingly, Applicants respectfully submit that independent claim 8, 14 and 19 and claims depending therefrom are allowable and respectfully request the Examiner to reconsider the rejection of the claims.

Rejections Under 35 U.S.C. § 103

Claims 9 and 20 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Scott (U.S. Patent 5,959,980) in view of Keen (U.S. Patent 4,388,723). Claim 10 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Scott (U.S. Patent 5,959,980) in view of Bunch et al. (U.S. Patent 4,121,216). Claims 17 and 18 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Scott (U.S. Patent 6,141,373) in view of Scott (U.S. Patent 5,959,980).

The claims rejected under this section all depend directly or indirectly from independent claims 8, 14 and 19 discussed above. Consequently, all of the dependent claims are believed to be patentable both by virtue of their dependency from an allowable base claim, as well as for the subject matter they separately recite. Reconsideration and allowance of all of the dependent claims on this basis are requested.

Conclusion

In view of the remarks and amendments set forth above, Applicants respectfully request allowance of the pending claims. If the Examiner believes that a telephonic interview will help speed this application toward issuance, the Examiner is invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,

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PSY
Patrick S. Yoder
Reg. No. 37,479
FLETCHER YODER
P.O. Box 692289
Houston, TX 77269-2289
(281) 970-4545